IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 13/2007

1. Shri Joseph Siqueira,
major of age, Sarpanch,
Village Panchayat of Calangute,
Calangute, Bardez, Goa.

2. Shri Ramakant Malik,
major of age, Sarpanch,
Village Panchayat of Pilerne,
Pilerne, Bardez, Goa.

3. Shri Agnelo D'Souza,
major of age, Sarpanch,
Village Panchayat of Arpora,
Arpora, Bardez, Goa.

4. Shri Savio Almeida,
major of age, Sarpanch,
Village Panchayat of Anjuna,
Anjuna, Bardez, Goa

5. Shri Fermine De Araujo e Fernandes,
major of age, Sarpanch,
Village Panchayat of Siolim,
Siolim-Marna, Bardez, Goa.

6. Shri Francis Fernandes,
major of age, Sarpanch,
Village Panchayat of Siolim,
Siolim-Sodiem, Bardez, Goa.

7. Smt. Sharmila S. Chodankar,
major of age, Sarpanch,
Village Panchayat of Oxel,
Oxel-Siolim, Bardez, Goa. ..... Petitioners.

V/s.

1. The State of Goa,
through The Chief Secretary,
Secretariat, Porvorim, Bardez, Goa.

2. The Secretary,
   Village Panchayats,
   Department of Panchayats,
   Government of Goa,
   Secretariat, Porvorim, Bardez, Goa.

3. The Director of Panchayats,
   Government of Goa,
   Junta House, Panaji, Goa.

4. The Goa State Election Commission,
   through its Commissioner,
   having Office at Third Lift,
   3rd Floor, Junta House, Panaji, Goa. ..... Respondents.

A N D

Shri Joseph Vaz, major in age,
earlier Panch,
Village Panchayat of Rachol,
Praca de Rachol,
Rachol, Salcete, Goa. ..... Intervenor

Mr. A.N.S. Nadkarni, and Mr. H. D. Naik, Advocates for the petitioners.

Mr. S. S. Kantak, Advocate General with Ms. Rakhi Chodankar, Addl. Govt. Advocate for the respondents No.1, 2 and 3.

Mr. V. P. Thali, Advocate for the respondent No.4.

Mr. Zeller D'Souza, Advocate for the Intervenor.

CORAM : S.K. SHAH &
N.A. BRITTO, JJ.

DATE : 13TH FEBRUARY, 2007.

ORAL JUDGMENT : (Per S.K. SHAH, J.)

Heard learned Counsel for the petitioners and the respondents as

also the Counsel for the intervenor. Rule, returnable forthwith and decided finally with the consent of the Counsel.

2. This writ petition has been filed by the Sarpanchas of various Village Panchayats in the State of Goa, seeking the relief to call for the records of the respondents and examine the so called policy decision of the respondent No.1 i.e. the State of Goa and also the Order dated 13.12.2006 passed by the State Election Commissioner, respondent No.4 and for directions commanding the respondents to forthwith declare the programme of elections to 185 Village Panchayats, so as to fulfill the constitutional mandate and constitute the Panchayat bodies.

3. There is a brief history behind this petition. The general elections to 185 Village Panchayats, out of 189 Village Panchayats in the State of Goa were held on 20.1.2002, the results of which were declared on 22nd-23rd January, 2002. The first meeting in respect of all the 185 Village Panchayats was held on 31.1.2002. The term of Village Panchayats is for a period of five years, which has now expired on 30th January, 2007. Before expiry of five years' term of all these Village Panchayats, respondent No.4 addressed various correspondence to the respondents No. 1. However, since there was no response from the respondent No.1, respondent No.4, State Election Commission approached this Court by filing a writ petition being Writ Petition No.563/2006. In this writ petition, an order came to be passed

on 6.12.2006, which is as under :

> " The learned Advocate General, after seeking instructions, makes a statement that the State has taken a decision to accept the decision of the Goa State Election Commissioner and would extend all possible cooperation in the matter. It is submitted that the State would place before the Election Commissioner its stand in taking the policy decision to postpone the elections and whatever the State Election Commissioner, after considering the same, decides, the State would accept the decision and extend full co-operation in the matter of holding Panchayat elections.
>
> We expect that the exercise would be completed within a week's time from today."

It appears that the respondent No.1-State wanted to place before the Election Commissioner the policy decision to postpone the elections. That was considered by this Court and liberty was granted. The direction contained in this order was that whenever the State Election Commissioner, after considering the policy decision decides, the State would accept the decision and extend its full co-operation in the matter of holding Panchayat elections. Since, there was a direction from this Court as aforesaid, the entire exercise was required to be completed within a week's time.

4. Accordingly, it appears that the State Government, respondent No.1 placed before the State Election Commission, respondent No.4 the

policy decision and the State Election Commission, respondent No.4 considered the same and passed the order dated 13.12.2006, which is impugned in this writ petition.

5. Briefly stated, the policy decision which the State Government took was to postpone the holding of elections to the various Village Panchayats in the State of Goa, mainly on the grounds (a) the schools are nearing their academic year end during the relevant period. Even the Board Examinations are round the corner. If the teachers were drafted for the election duties, it would disrupt the working schedule of the Schools, thereby adversely affecting their academic inputs and their quality; (b) most of the developmental works are suspended during the monsoons and as such, the period from November to February is very crucial for undertaking the developmental activities and if the elections were held in January, all developmental activities would come to a standstill and it would not be possible to incur the expenditure from the Budget provision made during the financial years due to the imposition of Code of Conduct for Panchayats elections; (c) the annual summary revision of the electoral rolls for Assembly and Parliamentary elections was in progress in the month of January, and the new electoral rolls would be published thereafter on 12.1.2007. As such, if the elections were held in January, they were to be conducted on the basis of old electoral rolls and if the elections were to be held in the month of May, the latest electoral rolls would be available and the voters who become

eligible to vote as on 1st January, 2007, and, therefore, it was necessary to prepare the latest electoral roll; and (d) most of the Government staff, who are usually drafted for election duties were requisitioned by the Chief Electoral Officer for election related work and the Chief Electoral Officer had expressed his inability to release these officials for the Panchayat elections Scheduled in January, 2007 and as such, there would be a severe constraint on the Government work force thereby hampering the administration.

6. This policy decision was placed before the State Election Commission, respondent No.4 who considered the same and passed the impugned order dated 13.12.2006. Besides, considering these grounds, the State Election Commission, in agreement with the policy decision of the Government, put up certain grounds for postponement of the elections. The findings recorded by the State Election Commissioner, respondent No.4 are :

(a) Although it was mandatory to hold the general elections to 185 Village Panchayats before 30th January, 2007, it was not possible to do so since the Director of Panchayats failed to issue and publish the notification in Form No.10, regarding formation of wards of the Panchayats;

(b) By Notification dated 27.9.2006, the State Government has reclassified the Village Panchayats on the basis of 2001 Population Census.

(c) According to the Director of Panchayats, the process of delimitation of wards would be completed as soon as the decision on reservation of wards for Scheduled Tribes Community is finalised by the Government; and

(d) The State Government has amended the Goa Panchayat Raj Act, 1994 by an Ordinance No.7 of 2006, promulgated by the Governor of Goa on 4th December, 2006 by which provision has been made for reservation of seats to the Panchayats for Scheduled Tribes by introduction of "explanation" below sub-section (8) of Section 7 of the Goa Panchayat Raj Act, 1994 and in view of the said amendment, the population of Scheduled Tribes can be ascertained from any other authenticated records maintained by the Government.

These were the grounds stated by the respondent No.4 showing its inability to hold elections before 30th January, 2007. The policy decision was considered by the State Election Commission, respondent No.4 and based thereon, the State Election Commissioner has given additional grounds for postponement of the elections and, these grounds are :

(i) There will be Board examinations of Std. Xth an Std. XIIth in most of the schools during the months of February and March, followed by School examinations in the month of March and April. He also held that the polling stations for conducting the Panchayat elections are mostly located in the Government School Buildings and for establishment of polling booths, the possession of a few rooms in the school buildings has to be taken two days prior to the date of poll by the Returning Officers. The respondent No.4, State Election Commission was of the opinion that if the possession of the rooms is taken at the time when the Board examinations or school examinations are in

progress, the working schedule of the examination of the schools would be adversely affected.

(ii) During the last Panchayat elections held in January, 2002, there were 854 polling booths and in view of the increase in the number of wards in 35 Village Panchayats by 72, it is expected that the number of Polling Booths for the ensuing Panchayat elections would be around 900. He further explained that at each polling booth, there will be one Presiding Officer, four Polling Officers and one Poling Peon, and, thus about 5400 Polling personnel would be required to conduct the Panchayat elections. Besides 5 % of the Polling Staff has to be kept as reserved. About 30 % of the Polling staff deployed for election work are government teachers . The Government staff who are usually drafted for Election duties have been presently requisitioned by the Chief Electoral Officer for election related work like revision of electoral rolls etc. Therefore, in the opinion of respondent No.4, there will be a severe constraint on the Government work if the Government Officials, in addition to the staff already deployed by the Chief Electoral Officer, are drafted for the election work.

7. Besides this, the order also shows that the new electoral rolls of the Goa Legislative Assembly prepared with 1st January, 2007 as the qualifying date, would be published on 12th January, 2007, the names of the persons who would attain the age of 18 years as on 1.1.2007 would be enrolled in the said electoral rolls as voters. He has held that if the Panchayat

elections are postponed, these voters would be able to exercise their right to vote at the said elections. He further clarified in the order that the right to vote is a fundamental right in the democracy and the Commission was of the opinion that this right should not be denied to the voters whose names would appear for the first time in the new electoral rolls.

8. On the basis of these grounds and these observations, the final order by respondent No.4 was passed, to the effect :

> "The general elections to 185 Village Panchayats in the State of Goa shall be conducted as early as possible on a date to be appointed by the State Government in consultation with the State Election Commission."

9. In fact, earlier to its final order, the respondent No.4 had notified 20th May, 2007 as the polling date. However, when it was pointed out that he could not decide the date, and it was for the State Government to decide the polling date, he issued the aforesaid corrigendum.

10. It is, thereafter, that the present petition has been filed on 11.1.2007. The grounds which are vehemently urged before us by the learned Counsel for the petitioners are namely that the holding of elections to the Panchayats was a mandate of the constitution as per the provisions of Article 243-E and the decision of the Government is in total contravention of the said provision of the Constitution. The learned Counsel submits that the election

Commission, respondent No.4 has no powers to postpone the elections.

On the other hand, the learned Advocate General representing the State, respondent No.1 states that as stated in the affidavit in reply specifically the elections to the Village Panchayats could be held by 20th May, 2007. The learned Advocate General also specifies that the Central Election Commissioner would chalk out the programme for holding elections to the Goa State Assembly and the final date for holding the Village Panchayat elections could be finalised only after this programme is declared so as to see that the elections do not collide and as both the elections could not be held on the same day.

11. Several authorities have been cited and submissions have been made. One of the submissions made on behalf of the respondent No.1 was that at this stage, when the Government has taken decision to accept the decision of respondent No.4 and agreed to give full support to the State Election Commission and the State Election Commissioner has passed the order and the Government has indicated that the elections would be held in May, 2007, it is not necessary to go into the aspects as to the powers of the Government to take policy decision and the powers of the State Election Commission to postpone the Panchayat elections and also as to whether the grounds on the basis of which the policy decision is taken by the State Government, were proper or not, as also the other grounds on the basis of which the State Election Commission, respondent No.4 passed the order dated

13.12.2006 were proper or not.

12. Today is 13th February, 2007. The State Government has indicated that the Village Panchayat elections will be held by around 20th May, 2007. However, the State is also apprehending that there will be collision of the date of elections to the Village Panchayat and to the State Legislative Assembly and, therefore, the State Government has to decide the final date. As the matter stands today, we cannot put the clock back to the period before the expiry of the period of five years' term of the Village Panchayat, which had expired on 30th January, 2007. The Government has taken policy decision to postpone the elections and that decision is based on certain grounds. That decision has been accepted by the State Election Commission and acceded to the request of the State Government to postpone the elections. Under these circumstances, we sincerely feel that it would be an exercise only of academic nature to decide whether Government has powers to take policy decision and whether the State Election Commission has powers to postpone the Panchayat elections in this petition. It is well settled that normally the Courts are not expected to decide the issues which are rendered purely of academic interest as observed by apex Court in the case of **State of Manipur and ors. vs. Chandam Manihar Singh, (AIR 1999 SC 3730).** The main relief which is sought in this petition is to hold the elections of 185 Village Panchayats forthwith. We feel that this prayer needs to be considered at this stage and, therefore, we proceed to consider it at this stage.

13. In order to consider the said main prayer, we will have to bear in mind the provisions of Article 243-E of the Constitution of India, as also the decision of the apex Court rendered in the case of **Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad & ors. (2006 AIR SCW 6044).** Perusal of the Article 243-E would make it clear that it is incumbent on the authorities to hold elections before the expiry of the period of elected body. The apex Court in **Kishansing Tomar's** case (supra) has clearly reiterated the same position by observing as under :

> " 18. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of duration of five years' period as stipulated in clause (5) and not yield to situation that may be created by vested interests to postpone elections from being held within the stipulated time."

Therefore, it is abundantly clear that the elections to the Village Panchayats in Goa have to be held forthwith.

14. While considering that prayer, the petitioner on their own saying in para 23 of the petition have clearly stated that the minimum period of 60 days commencing from the date of publication of the Notification in Form 10, under Rule 4 of the said Rules in the Official Gazette is required to be issued by the respondent No.4 to discharge its Constitutional obligations of holding the elections for the Panchayats. This makes it clear that the minimum period of 60 days is required after the the notification is issued as required under Section 4 of the Goa Panchayat Act. The State Election Commission, in its Order, has directed that the Notification in Form No.10 under sub-section (3) of Section 7 of the Goa Panchayat Raj Act, 1994 read with Rule 3 and Rule 4 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996 shall be issued and published by the Director of Panchayats latest by 1st March, 2007. This being the position, even if the said Notification is issued on 1st March, 2007, the minimum period of 60 days as required under law is to expired on 30th April, 2007. The respondent No.4 has further directed that the Notification in terms of Section 15 of the Goa Panchayat Raj Act, 1994 read with sub-rule (1) of Rule 10 of the said rules appointing the date of election shall be issued by the State Government by 10th April, 2007. It is after such directions were issued by the State Election Commission, respondent No.4, the respondent No.1-State in their affidavit-in-reply has indicated that the notification under Section 15 of the Goa Panchayat Raj Act, has been issued declaring 20th May, 2007 as the polling date.

15. As indicated above, we need not go into the aspect of legality of the policy decision and the legality of the decision of the State Election Commission. Looking at the matter, as it stands today, we feel that the holding of Panchayat elections by 20th May, 2007 will be much beyond the actual period required for the purpose of completing the election process. We also see no justifiable ground now to extend the period to that extent.

16. After giving serious consideration to all the aspects and considering that the matter relates to holing of elections of 185 Village Panchayats in the State of Goa, we feel that, as the matter stands today, the entire election process could be completed and the elections could be held by 7th May, 2007.

16. In these circumstances, we dispose of this writ petition with directions to the respondents to complete the entire election process and hold elections to 185 Village Panchayats in the State of Goa by 7th May, 2007. Rule is, accordingly, made absolute.

The parties to act on the basis of the authenticated copies of this order.

S.K. SHAH, J.

N.A. BRITTO, J.

ssm.